ALTERNATIVE REPORT TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW)

REVIEW OF THE PERIODIC REPORT OF IRAQ

MINORITY RIGHTS GROUP INTERNATIONAL (MRG), CEASEFIRE CENTRE FOR CIVILIAN RIGHTS, AND ASUDA FOR COMBATING VIOLENCE AGAINST WOMEN

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Minority Rights Group International is an NGO working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG works with over 150 partner organizations in nearly 50 countries. It has consultative status with the United Nations Economic and Social Council (ECOSOC) and observer status with the African Commission on Human and Peoples’ Rights (ACHPR).

The Ceasefire Centre for Civilian Rights is a new initiative to develop ‘civilian-led monitoring’ of violations of international humanitarian law or human rights, to pursue legal and political accountability for those responsible for such violations, and to develop the practice of civilian rights.

Asuda for Combating Violence against Women is a non-governmental, non-profit organization established on 21 August 2000 and based in Sulaymaniyah, Kurdistan Region of Iraq. Asuda’s vision is a world where women enjoy dignity and equal rights and access to resources and opportunities, where all forms of discrimination and marginalisation against women have been eliminated, where violence plays no part in women’s lives.

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I. BACKGROUND

A) Introduction

1. Iraq continues to perpetuate an environment of structural discrimination which hinders and, in some cases, prevents female participation in social, political and economic life. Many laws and policies discriminate against women in various matters from personal status to nationality and identity, while social attitudes continue to produce harmful practices against women and girls. Some types of violence against women are effectively sanctioned by the existing framework due to the lack of effective criminalizing legislation.

2. The rise of ISIS, which rapidly expanded across seven of Iraq’s 19 governates in 2014, and the ensuing mass displacement and campaign to eliminate the group from Iraq’s territories have had both direct and wider negative effects on women. Women were subjected to grave violations including sexual violence, slavery and killings. Minority women have been particularly vulnerable and targeted. At time of writing, the fate of over 3,000 Yezidi women and girls abducted by ISIS remains unknown.

3. The strengthening of patriarchal attitudes and militarisation under ISIS and the anti-ISIS campaign have also meant that Iraq has seen an increase in forms of family-based violence alongside a heightened insecurity in the streets. Women in Iraq generally face high levels of gender-based violence, including female genital mutilation, domestic violence, sexual harassment, murders in the name of honour, forced and early marriage, and human trafficking. These crimes continue to be perpetrated with impunity, with few prosecutions for rape and other acts of violence.

B) Constitution and Legal Framework

Articles 2; 3; 15 and 16 of the Convention

4. Iraq’s 2005 Constitution guarantees the principle of equality before the law and the enjoyment of human rights to all Iraqi citizens without discrimination, (Articles 14 and 15), including specific provisions that protect women from violence (Article 29-(4)). However, many aspects of Iraq’s legal framework openly discriminate between women and men or legitimize violence against women, in violation of its own Constitution and international conventions.

5. The Iraqi Penal Code of 1969, Article 398, excuses rapists from punishment if they marry their victims for a minimum period of three years. The same provision applies in cases of abduction. Article 41 of the Penal Code considers ‘the punishment of a wife by her husband … within certain limits prescribed by law or by custom’ to be a ‘legal right’ and therefore not a criminal act. Further, Article 128 considers ‘honourable motives’ to be a mitigating excuse in the commission of an offence, allowing the applicable penalty to be greatly reduced. Since ‘honourable motives’ are not defined, this article provides a legal cover for murder and other serious crimes against women on a wide variety of grounds. Along a similar vein, Article 409 provides that if a man catches his wife or girlfriend in the act of adultery and then murders or permanently disables her or her partner, he is eligible for a reduced sentence of no more than three years in prison.
6. The Personal Status Code No. 188 of 1959 differentiates between men and women in terms of the right to divorce. A man can divorce his wife for any reason by pronouncing three repudiations, whereas the wife can only ask for separation in a fixed number of circumstances, such as the husband’s infidelity, his taking another wife without permission, or abstaining from spending money on the wife. These provisions make it more difficult for women to end marriages than men, while leaving women vulnerable to being divorced against their wishes.

7. The Government of Iraq (GoI) has yet to pass a law criminalizing domestic violence. The absence of such legislation, coupled with the above-mentioned elements of the existing legal framework which enable various forms of violence, leave survivors with few legal remedies. In 2017, Iraq’s parliament reviewed a draft Anti-Domestic Violence Law, first introduced in 2015. While this was an important development, the draft as originally presented contains a number of weaknesses that render it insufficient to protect women and girls from violence. It does not set clear penalties for acts of domestic violence, and heavily emphasizes family reconciliation as a solution, rather than prosecution of perpetrators. While it mandates a system of government-run shelters, it places them under the control of the Ministry of Interior, and places maximum limits on the time women can remain there until returning to their families.¹

8. In the Kurdistan Region, domestic violence is criminalized under the Domestic Violence Act No. 8 of 2011, which is relatively comprehensive in its list of offences which constitute domestic violence. The law also established a system of government-run shelters for survivors of violence. The General Directorate to Combat Violence against Women (GDCVAW), a division of the Ministry of the Interior, has sub-directorates in each governorate responsible for receiving complaints and collecting data about violence against women.

9. Despite progress made by Kurdistan’s authorities in combating violence against women, challenges remain. Admission to the government shelters requires a judicial order, which means that a victim of violence needs to initiate formal legal proceedings against the perpetrator.² This is not only impractical in emergency situations, but also a route many women are unwilling to take, due to family pressure and continuing stigma around the Domestic Violence law. Government shelters also do not permit women to bring their children with them, and conditions in the shelters were reportedly poor during the economic crisis affecting the public sector in Kurdistan.³ There are also several issues with the Domestic Violence law itself. For example, it does not allow third parties to file complaints on behalf of victims,⁴ and some of the penalties in the law for acts of violence carried out by family members are lighter than the penalties prescribed for similar types of violence in the Iraqi Penal Code. A series

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³ Ibid.
of amendments to the law drafted by civil society organizations and think tanks have been presented to parliament, but have yet to be passed.5

II. HUMAN RIGHTS VIOLATIONS

A) Gender-Based Violence Due to Prejudices and Harmful Customary Practices

Article 5 of the Convention

10. So-called ‘honour’ crimes in Iraq most often take the form of murder, but also encompass other forms of violence such as physical abuse, confinement, control of movement, deprivation of education, forced marriage, and public dishonouring. The practice of forced self-immolation is also prevalent. As many survivors of self-immolation describe being trapped in forced marriages, exposed to domestic violence and unable to get a divorce for fear of shaming their families, the phenomenon can be viewed as part of the same culture of violence and control of women that allows ‘honour’ crimes to occur.

11. The practice is legitimized in the Iraqi Penal Code, which allows mitigated sentences for perpetrators of crimes against women in which ‘honour’ was a motive, and prescribes the ‘punishment’ of a wife by her husband within limits to be a legal right. Despite the GoI’s claim in its state report that ‘honourable motive’ is not exclusive to crimes against women but can also be cited for other crimes, in practice the provision disproportionately affects and discriminates against women who are considered to be the bearers of honour in society. Meanwhile, government-run shelters tend to emphasize family reconciliation as a solution, releasing women after a short stay with no systematic procedure in place to ensure that they will not be exposed to further harm.

12. In the Kurdistan region, the principle of honour as a mitigating factor has been removed from the legal system, but the persistent power of tribal justice means that ‘honour’ killings often continue to go unpunished. Trials for ‘honour’ killings often end in acquittals or light sentences, even in the face of clear evidence incriminating the perpetrator. Police often accept the family’s version of events and do not conduct investigations while hospitals register deaths as suicides even when a woman’s body shows signs of violence, fearing retaliation from the woman’s family.

13. Despite the criminalization of female genital mutilation (FGM) in Kurdistan in 2011, FGM continues to be practised on girls and women.6 Prosecutions in cases of FGM are impeded by the fact that perpetrators of the practice are almost always the victim’s immediate family members or relatives, making it unlikely that the victim, especially if a minor, would report them. Moreover, reporting the incident could lead to reprisal against the victim in her community and home, and would offer little benefit to the victim once the procedure had already been performed. Due to the fact that FGM has become illegal and bears criminal consequences, the practice has now gone

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underground. The federal government of Iraq does not have any legislation dealing with the issue of FGM, denying even its existence outside the Kurdistan region.

B) Conflict-related violations of the right to life, security and adequate protection (including right to effective remedies)

_Articles 3 and 6 of the convention_

14. Since the last review, the GoI has failed to take adequate measures to protect women in conflict. Women belonging to minorities, including Yezidis, Christians, Turkmen, Shabak, and others, have been particularly affected. ISIS has perpetrated mass killings, arbitrary punishments, sexual violence and forced conversions. Women have been targeted and sold as sexual slaves or forcibly married to ISIS fighters and have been subjected to violations including rape, physical and verbal abuse, deprivation of basic necessities, and various forms of torture.

15. In August 2014, ISIS killed approximately 3,100 Yezidis and kidnapped a further 6,800 to become sex slaves or fighters.\(^7\) As of February 2019, over 3,000 of those kidnapped remain missing.\(^8\) Christian and Shi’a women and girls in northern Iraq, and Sunni women who fled the violence in Anbar Province were also targeted by ISIS. Shi’a Turkmen women and girls kidnapped by ISIS from Tal Afar have also reportedly been subjected to sexual violence, including rape, before being killed. On 9 August 2015, the Turkmen Rescue Foundation reported that 700 Turkmen from Mosul, including women and children, had been executed by ISIS.\(^9\) In August 2019, the Iraqi parliament’s human rights committee reported that only 119 women and 22 children of Turkmen ethnicity had been freed from ISIS captivity.\(^10\)

16. The expansion of ISIS control and ensuing conflict resulted in the internal displacement of nearly 6 million people, with severe consequences for women and girls. There has been an increase in reports of incidences of sexual violence inside displacement camps. Many women in displacement also suffer a wide range of health issues, from severe post-traumatic stress to complicated gynaecological issues, disease and life limiting disabilities; they are in great need of psychotherapy and counselling amongst other specialised care and protection measures such as suitable sanitation facilities for people with disabilities and gender-segregated safe spaces for girls and women.

17. Many of those displaced were female heads of households who lost or were separated from the male breadwinner. Displaced women travelling without a male companion are often prone to exploitation and abuse,\(^11\) and can also face challenges with documentation due to patriarchal nature of documentation systems in Iraq. Food ration cards, for instance, bear the name of the male head of the household, thus women without a male companion are often prevented from transferring and using the card. Moreover, female-headed households face additional challenges following the

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\(^7\) MRG, Crossroads: The Future of Iraq’s Minorities After ISIS pp.11-12
\(^8\) Hall, R., ‘Yazidi leaders call for help finding thousands of missing women and children kidnapped by Isis’, The Independent, 28 February 2019 – https://ind.pn/2TiLaV3
death of the provider (a likely scenario for ISF or PMU employees), as they do not receive the salary of the deceased husband.\textsuperscript{12}

18. Displaced women, especially widows and female-headed households, are particularly vulnerable to trafficking. There were approximately 1,600,000 widows in Iraq at the beginning of 2014 and even more female-headed households. By February 2015, approximately 33 per cent of displaced widows had not received any humanitarian assistance and 76 per cent did not receive a pension.\textsuperscript{13} These figures are likely to have increased significantly due to the increased mass displacement since 2015. The dire economic situation of widows means that many were pushed to enter temporary marriages to sustain themselves. Despite the information provided by the GoI about loans granted to widows, the figures are extremely low compared to the number of widows and female-headed households impacted by the conflict.

19. Despite the retaking of territories formerly under ISIS control, the proliferation of armed groups across Iraq is particularly acute, while a fragile state and weak rule of law have generated an atmosphere of impunity which has encouraged violence, harassment and discrimination. Militias belonging to the Popular Mobilization Forces (PMF), key partners in the military campaign against ISIS, have considerable power and influence in many retaken areas. Killings of women by tribal or militia forces to enforce moral codes have occurred across Iraq.

20. Members of the police are also known to be perpetrators of gender-based violence. Sexual assault is frequently used during police interrogation as a method of extracting confessions and is also widespread within the detention system. Women who have escaped from trafficking have been convicted on charges of prostitution, which is illegal under Iraqi law, or for other offences such as possession of forged documents. The federal government has prevented NGOs from operating shelters, while making scant efforts to establish functioning government-run shelters. Many victims of trafficking who are serving prison sentences prefer to stay in prison past their sentences than to leave and risk being trafficked again or punished by their families.\textsuperscript{14}

C) Right to participate in public and political life

\textit{Articles 7 and 8 of the Convention}

21. Iraq committed itself to improving the political participation of women, including in conformity with Security Council Resolution 1325. The system of seats for women in the Iraqi parliament has boosted women’s representation in public life, but serious concerns remain at all levels about both formal and societal barriers to women’s effective public participation. Women in public life have often been exposed to threats and intimidation, and a number of killings have occurred.

22. Minority women are barely represented in government and local authorities. As a result, minority defenders often work at a grassroots level, with limited access to

\textsuperscript{12} No Way Home: Iraq’s minorities on the verge of disappearance  

\textsuperscript{13} No Place to Turn: Violence against women in the Iraq conflict  
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\textsuperscript{14} No Place to Turn: Violence against women in the Iraq conflict  
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national – let alone international – resources, platforms and formal protection structures. Many of the lands occupied by ISIS were inhabited by minority communities, including Turkmen, Yezidis, Christians, Shabak and Kaka’i. Minorities have been particularly affected by the conflict and minority women defenders from these areas remain under threat. Threats against minority women defenders can go unnoticed or ignored.

23. The outbreak of large-scale popular protests in Basra and other Iraqi cities from July 2018 has led to a wave of violent repression of civilian activists, including women. In addition to the use of excessive force against protestors on the streets, there has been a campaign of systematic death threats, arbitrary detentions and premeditated assassinations. These include Hajar Youssif, an Iraqi activist and volunteer medic, who was kidnapped, beaten and threatened for attending protests in Basra and Suad Al-Ali, a human rights activist and head of Al-Wid Al-Alami for Human Rights in Basra, who was shot dead in front of a supermarket on 25 September 2018. Women in the public sphere, participating in protests, or in the 2018 elections have further been subjected to public defamation campaigns and sexual shaming. Such attacks can leave women defenders isolated and sometimes ostracized by their communities.

D) **Right to Nationality**

*Article 9 of the Convention*

24. Many displaced women face serious consequences resulting from the loss or theft of their identity documentation following their displacement. Bureaucratic obstacles prevent IDPs from registering for replacement or new identity documents, such as the requirement to do so from particular inaccessible locations. Without the necessary civil documents, IDPs may find it challenging to register subsequent divorces, deaths, marriages and births, with restrictions on the latter impeding displaced children’s attainment of nationality.

25. The Civil Status Law of 1972 holds that the religion of a child shall follow the religion of the Muslim parent while Article 45 of the Juvenile Welfare Law of 1983 also asserts that ‘the minor of an unknown affinity shall be considered as Iraqi Muslim unless it is proved to the contrary’. This is of particular concern where children conceived through rape by ISIS militants, but born to a non-Muslim mother, must be registered as Muslim. This has placed minority children in particular, born from rape, at risk of statelessness where the mother is unwilling to identify her child as Muslim. Although Iraq has reportedly reformed its laws to allow women to confer nationality to their children at birth, the inability of women to do so without paternity documents is still a major restriction. This is not only true for minority female survivors but also mothers in displacement for example who may know the identity of the father but paternal identity documents are not attainable. Given the ethnic and religious demographics of IDPs, minority children are especially affected by this risk.

26. The Personal Status Code of 1959 allows Muslim men to marry non-Muslim women but prohibits the marriage of Muslim women to non-Muslim men. This has led many couples to marry in religious services without officially registering their marriage,

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which may prevent their children from receiving state-issued identification documents.

E) **Right to Equality in Economic and Social Life**

*Articles 3; 10; 13 and 14 of the Convention*

27. Women with disabilities are in a particularly vulnerable situation, especially if they are internally displaced. Although the 2013 Law for the Care of Persons with Disabilities and Special Needs and 2014 Social Protection Act provide cash transfer benefits and specialized services to people with disabilities, the process of claiming benefits requires several documents which many IDPs do not possess. Moreover, disabled women and girls are not entitled to social security payments if they are married or if their father is alive. Not only does this deprive many women from economic security, but it is particularly problematic for minority women who have lost or been separated from their fathers or husbands in displacement or in the conflict and lack both familial and state economic support structures.

28. Conditions in IDP camps are particularly challenging for persons with disabilities. According to the Iraqi Association of Disabilities Organizations, some of the main challenges faced by IDPs with disabilities are lack of documentation, the absence of specialized medical and recreational services, and the long distance of educational facilities from the camps, leading many disabled children to drop out of school. Access to education is a particular challenge for girls, as displaced families have often chosen to not send their daughters on long and difficult trips to school or learning centres.

29. The conflict with ISIS caused an estimated IQD 2.7 trillion (US$ 2.3 billion) damage to Iraq’s healthcare system. According to World Bank statistics, apart from Tel Afar, al-Muqdadya and al-Ramadi, all cities in regions occupied by ISIS had at least half of their healthcare facilities partially or fully destroyed. The GoI, supported by the international community, has begun rebuilding healthcare infrastructure damaged during the conflict. Damage to housing and infrastructure also threaten public health in areas of return, with the presence of explosive remnants of war and damage to basic services, including electricity and clean water, particularly pressing concerns for returning women who are unable to resume economic and social life as a result, and in particular women with disabilities whose social and economic participation may be dependent on accessibility to such provisions. The lack of services and facilities in displacement has also added to the psychological pressures for families who struggle to meet the needs of their disabled relatives in such conditions. Many minority women who have survived the conflict, including women and girls formerly held captive by ISIS, continue to suffer long-term psychological trauma which hinders engagement in social and economic life, and further necessitates specialised measures to ensure their protection.

F) **Marriage and family life**

*Article 16 of the Convention*

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16 Email communication with the Iraqi Association of Disabilities Organizations, October 2018.
30. Forced marriage is illegal under the Iraqi Personal Status Code, yet the country has witnessed increasing rates of the practice, including large numbers of girls married under the age of 14 and some as young as ten. Economic crisis brought on by war has driven many families to force their underage daughters into marriage, while a sample study conducted by ASUDA found that tribal customs, family culture or traditions played a role in 85.6% of forced marriage cases. The practice of fasliyya, in which women are bartered as a means of resolving tribal disputes, is also often undertaken. Notably, the Iraqi Penal Code permits perpetrators of sexual assault to evade prosecution by marrying their victims, which also increases the risk of forced marriages.

31. Forced marriage in Iraq often leads to further violations including physical violence, sexual abuse and deprivation of education. Moreover, since child marriages almost always take place outside of the court system, children produced by the marriage cannot be registered or acquire identity documents. Without proof of the marriage, women are unable to obtain their rights through court proceedings such as alimony or widow’s benefits. Once a child or forced marriage has been consummated, it is not considered legally void. This leaves victims responsible for pursuing legal measures in order to leave such marriages. This is an option that few women choose, since it could open them to retribution from their families and the law does not provide any protection for victims following a complaint. In the case of child marriages, it requires a minor to file a lawsuit against her own family members. Furthermore, Iraq’s Personal Status Code of 1959 does not grant equal rights to men and women to dissolve a marriage.

32. In the Kurdistan region, forced marriage, bride exchanges, marriage of minors, and marriages in exchange for blood money are illegal. However, these violations continue to take place in large numbers outside the formal judiciary system, particularly in rural areas. The practice finds sanction in tribal traditions, such as the tradition of ‘jin be jin’ (a woman for a woman), in which brides are exchanged between tribes in order to avoid payment of dowries. As in other regions of Iraq, forced marriage is also used as a method of resolving tribal disputes and in some instances, girls are betrothed to relatives or other tribe members from the time of birth.

III. RECOMMENDATIONS

To the Central Government of Iraq:

1. Withdraw reservations to Articles 2 (f) and (g), 9 (1) and (2), 16 and 29 of the Convention on the Elimination of All Forms of Discrimination against Women.

2. Repeal or reform Article 41 of the Iraqi Penal Code, which grants husbands the right to discipline their wives; Article 128, which allows for mitigated sentences for crimes committed with ‘honourable’ motives; Article 398, which absolves perpetrators of rape from punishment if they marry their victims; and Articles 377, 378 and 409, which discriminate between men and women in cases of adultery.

3. Develop a comprehensive domestic violence law, including clear definitions of violence, effective and deterrent penalties, and support services for survivors.

4. Carry out prompt, impartial, independent and effective investigations into crimes against women, including crimes committed by members of the police, security forces, the PMF and other non-state militias.

5. Improve efforts to implement the Human Trafficking Act No. 28 of 2011, including by establishing a database of traffickers and trafficking routes, training police and security forces to recognise the signs of trafficking, increasing efforts to identify victims and refer them to protection and rehabilitation services, and prosecuting offenders; and strengthen cooperation with destination and transit countries to improve mechanisms for fighting trafficking.

6. Increase the number of shelters available to women fleeing violence and exploitation, and extend support to non-governmental organizations providing such services.

7. Provide all police units with gender-sensitivity training, including proper interviewing techniques for victims of sexual violence, and establish protocols for providing rape victims with forensic medical attention and appropriate support services; and take measures to increase the recruitment of women in the police force, especially in units for dealing with gender-based violence.

8. Work with the KRG to determine the whereabouts of women and girls abducted by ISIS.

9. Provide adequate psychosocial support to victims of the conflict, particularly minority survivors of sexual slavery and children indoctrinated by ISIS.

10. Raise awareness, especially in rural areas, about the legal minimum age of marriage and the right of women and men to enter into marriage freely with a spouse of their choosing; and engage men and boys in public awareness programmes to end violence against women.

11. Ensure that all marriages are registered and penalize clerics found to be conducting forced and underage marriages outside the domain of the law.

12. Simplify the procedures for registration for social funds for PWDs and increase fund amounts to reflect living and healthcare costs. Amend policies to ensure that women and girls with disabilities have equal access to social funds.

To the Kurdistan Regional Government:

1. Pass a comprehensive anti-trafficking law.

2. Work with the federal government to determine the whereabouts of women and girls abducted by ISIS.

3. Improve the provision of services, such as counselling and psychological support, to women who have experienced sexual violence.

4. Provide gender-sensitivity training to police, investigators, judges and prosecutors, including training on how to handle cases of domestic violence in an appropriate and sensitive manner and continue to increase the recruitment of women into the police force.
5. Ensure that all marriages are registered and penalize clerics found to be conducting forced and underage marriages outside the domain of the law.

6. Initiate proper investigations into all violent deaths and reported suicides of women and ensure that perpetrators are held accountable.

7. Provide educational programmes and skills training to traditional midwives to encourage them to cease the practice of FGM.

8. Improve the quality of shelter facilities available for survivors of violence and reduce the barriers to access, including by simplifying entry procedures.

9. Consider passing amendments to strengthen Law No. 8 on Domestic Violence, such as by allowing witnesses and third parties to submit complaints on behalf of victims of violence.

10. Engage men and boys in public awareness programmes to end violence against women and ensure such programmes target key constituencies, including religious and tribal leaders.